IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2612 of 2007()

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CC.2271/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER: PETITIONER/ACCUSED

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K.NAGESWARA REDDY,
S/O K.RAMALINGA REDDY, AGED 45 YEARS,
8/342, S.S.ROAD, PRODDATUR,
KADAPPA DISTRICT, ANDRA PRADESH - 516360.

BY ADV. SRI.V.B.HARI NARAYANAN

RESPONDENTS: RESPONDENTS/COMPLAINANTS

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1. M/S HINDUSTAN LUBRICANTS CO. PVT. LTD.,
2ND FLOOR, CORPORATION BUS STAND BUILDING,
KALOOR, COCHIN-17.

2. STATE OF KERALA, REP. BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.2612 of 2007**

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**Dated this the 16th day of August, 2007**

**O R D E R**

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. According to the petitioner, the cheque was not issued for the due discharge of any legally enforcible debt or liability. It was allegedly issued only as security on the specific understanding that it shall never be presented. The cheque was allegedly presented contrary to the specific terms of the understanding when the cheque was handed over. After following the procedure stipulated by law, the complaint has been filed. Cognizance has been taken. The petitioner has to appear before the learned Magistrate now.

2. The learned counsel for the petitioner submits that the cheque is not issued for the due discharge of any legally enforcible debt/liability. It was only issued as a security and in these circumstances the proceedings initiated against the petitioner may be quashed. The counsel relies on some internal communications between the complainant's officer and the complainant in support of this theory.

3. The question of fact as to whether the cheque was handed over as security only and whether the cheque was issued for the discharge of any legally enforcible debt/liability will certainly have to be decided, in the course of trial on the basis of materials which both contestants choose to place before the learned Magistrate. It will be improper, unnecessary and inexpedient for this Court to try to resolve that controversy on facts by invoking the jurisdiction under Section 482 Cr.P.C. I am, in these circumstances, of the opinion that on the basis of a contention which the petitioner wants to raise before the learned Magistrate, the powers under Section 482 Cr.P.C cannot and need not be invoked. It is for the petitioner to raise all contentions before the learned Magistrate and seek appropriate finding.

4. The learned counsel for the petitioner submits that if the personal presence of the petitioner were insisted on all dates of posting, the petitioner a person residing at Hyderabad will be put to great hardship and loss. I find no reason why the petitioner cannot appear before the learned Magistrate through counsel and apply for exemption under Section 205 Cr.P.C. It is not necessary to insist on the personal appearance of the petitioner to consider such a plea for exemption. It is by now trite that plea of the petitioner in a summons case can also be recorded through counsel. In these circumstances, I

need only observe that the petitioner can apply for exemption and the learned Magistrate must consider such prayer for exemption and pass appropriate orders. Unnecessary insistence on such personal appearance need not be made at all.

**(R.BASANT, JUDGE)**

rtr/-